

**BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD
OF THE STATE OF CALIFORNIA**

AB-7523a

File: 20-301796 Reg: 99046396

KYUNG H. KIM and SEUNG I. KIM dba Santa Ana Shell
8275 East Santa Ana Canyon Road, Anaheim, CA 92808,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: April 3, 2003
Los Angeles, CA

ISSUED MAY 21, 2003

Kyung H. Kim and Seung I. Kim, doing business as Santa Ana Shell (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which revoked their license, but conditionally stayed revocation conditioned upon two years of discipline-free operation and service of a 30-day suspension, for their clerk having sold an alcoholic beverage to a minor in violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellants Kyung H. Kim and Seung I. Kim, appearing through their counsel, Ralph Barat Saltsman and Stephen Warren Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

¹The decision of the Department, dated December 6, 2001, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

This is the second appeal in this matter. In the original appeal, the Board affirmed the decision of the Department in all respects except that involving the issue of discovery. As to that issue, the Board held that appellants were entitled to discover the identities of other licensees who sold to the same decoy during the same decoy operation, and remanded the case to the Department for further proceedings.

Upon remand, the Department directed that the discovery information be supplied, following which the Administrative Law Judge directed appellants to file an offer of proof setting forth any additional evidence they intended to present. Defendants filed an offer of proof in which they represented their intentions to recall the decoy and the police officer for additional cross-examination.

The ALJ concluded that appellants' offer of proof did not contain any new evidence which would warrant further proceedings, and issued an order reaffirming his original proposed decision. The Department adopted the proposed decision, and this appeal followed. Appellants contended in their brief that the Department, by rejecting its offer of proof and declining to hold further hearings, effectively denied it a fair opportunity to cross examine the decoy and the accompanying police officer. At the hearing, counsel for the Department stipulated to the reversal of the Department's decision.

ORDER

Pursuant to the stipulation of Department counsel, the decision of the Department is reversed and the matter is remanded to the Department for such further

proceedings as may be appropriate.²

TED HUNT, CHAIRMAN
E. LYNN BROWN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

² This final decision is filed in accordance with Business and Professions Code §23088 and shall become effective 30 days following the date of the filing of this final decision as provided by §23090.7 of said code.

Any party may, before this final decision becomes effective, apply to the appropriate district court of appeal, or the California Supreme Court, for a writ of review of this final decision in accordance with Business and Professions Code §23090 et seq.